



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference: MAN/00CH/HNA/2020/0040

**HMCTS code
(audio,video,paper):** V:FVHREMOTE

Property: 16 Watt Street, Gateshead, Tyne & Wear
NE8 4TU

Applicants: Mr & Mrs R Pinnick

Respondent: Gateshead Council

Type of Application: Appeal against financial penalty-
Section 249A and Schedule 13A to
the Housing Act 2004

Tribunal Members: Judge J.M.Going
I.R.Harris MBE FRICS

**Date of
Hearing** : 12 February 2021

Date of Decision : 17 February 2021

DECISION

Covid -19 pandemic: description of hearing:

This has been a remote Full Video Hearing which has been consented to by the parties. The form of remote hearing was V.FVHREMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to were in a series of electronic document bundles, statements, and submissions as described below, the contents of which were noted.

The Decision and Order

The Final Notice is to be varied by amending the financial penalty to £4567, to be paid within the period of 28 days beginning with the day after that on which this Decision is posted to the parties.

Preliminary

1. By an Application dated 3 July 2020 the Applicants (“Mr & Mrs Pinnick”) have appealed to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under paragraph 10 of Schedule 13A of the Housing Act 2004 (“the Act”) against the Respondent (“the Council”)’s issue on 5 June 2020 of a Penalty Charge Notice dated 4 June 2020 (“the Final Notice”) requiring the payment of a penalty charge of £6092, after it had been satisfied that they had failed to comply with an Improvement Notice relating to the property issued under section 30 of the Act.
2. The Tribunal gave Directions.
3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other.
4. A Full Video Hearing was held on 12 February 2021. Mr Pinnick represented himself and his wife. Also in attendance were Ms Evans, a Private Rented Housing Officer with the Council, Ms Tankerville who is Ms Evans’ Line Manager, and Mr Currie, the solicitor for the Council. Mr Snowball, a newly appointed member of the Tribunal, observed as did Mr Hyde, the Tribunal’s case officer.

The Property

5. The Tribunal did not inspect the property, but understands it is to be a small 2 bedroomed first floor “Tyneside flat” in a mid-terraced house. It has its own front door on the ground floor opening onto Watt Street with the living accommodation being on the first floor. As well as the two bedrooms there is a lounge/dining room, and kitchen and bathroom offshoot to the rear. That

offshoot contains a rear external door on the first floor which leads down stone stairs to the rear yard.

The Facts and Chronology

6. The following facts and timeline of events is confirmed from an analysis of the papers. None have been disputed, expect where specifically referred to.

25 July 2018	A Shorthold Tenancy Agreement was completed between Mrs Pinnick referred to as the landlord with Ashley Calder and David Scott as the joint tenants, for an initial term of six months at a monthly rental of £425.
20 September 2018	An email from Ms Calder to Mr Pinnick, in response to his email of the same day stating that no payment of rent had been made since moving into the property, referred to the electrics tripping in the kitchen and the shower not working.
30 September 2018 – 18 October 2018	Mr Pinnick’s Statement of truth refers to an engineer instructed to repair the shower unit, making multiple attempts to contact the tenants, before being able to access the property on 8 October. The engineer suspected drug use by the tenants, and that malicious damage had been caused, specifically to an internal door that looked like it had been punched. A new electric shower unit was installed on 18 October 2018.
16 January 2019	Mr Pinnick’s log refers to visiting the property but with access denied.
11 March 2019	The Council received a complaint from the tenant about the property. The case notes of the conversation referred to “Disrepair has been reported... several times, not resolved. Ashley withholding her rent, advised not to do this. Electrics trip when using the washing machine then turns taps, often off 2 to 3 hours at a time, sometimes overnight. All of the plug sockets throughout the property are hanging off the walls. Leak in dining room. Has been told fix repairs herself by Mr Pinnick. Boiler pressure keeps dropping, no hot water or heating. Appears to be only 1 smoke alarm, Ashley unable to check if it’s working as she can’t reach it. Black mould in bathroom, Ashley said the window is open regularly. Every window in the flat has gaps Ashley very stressed about the situation”.
	A Land Registry search by the Council confirmed that the property is jointly owned by Mr and Mrs Pinnick.
12 March 2019 – 15 March 2019	Arrangements were made between the parties for an inspection of the property by the Council. The occupier reported further disrepair to the boiler.
18 March 2019	Ms Evans inspected the property.
18 March 2019	She emailed Mr & Mrs Pinnick on the same day with details of the inspection, listing 19 deficiencies.

30 March 2019	The occupier informed the Council that a repair to the boiler had been completed but no other repairs have been attempted.
1 April 2019	There were various emails between Mr Pinnick and Ms Calder as regards the rent arrears which were copied into Ms Evans.
2 April 2019	Mr Pinnick replied to Ms Evans request for an update on repairs by stating “I am applying for a loan for this. Hope to have this soon so it can also be sorted. I have just spent a couple of hundred pounds repairing the boiler”.
10 May 2019	Ms Evans sent Mr Pinnick a further email asking for an update on when the outstanding repairs will begin, pointing out that if there was no progress with the works there would be no option other than to serve Notice.
15 May 2019	Mr Pinnick emailed Ms Evans requesting a joint visit to the property.
16 May 2019 – 21 May 2019	Mr Pinnick and Ms Evans attempted to arrange a joint visit and agreed a suitable date, but Ms Calder then confirmed to Ms Evans that she did not want Mr Pinnick to visit, and the joint meeting at the property did not take place.
20 May 2019	Ms Calder advised Ms Evans of a leak from the property into the property below (14 Watt Street).
20 May 2019 – 23 May 2019	Further reports from Ms Calder to Ms Evans about issues with the boiler.
23 May 2019	Ms Evans emailed Mr Pinnick with formal Notice of her intended inspection of the property the next day.
23 May 2019	The tenants sent a WhatsApp message to Mr Pinnick, after two missed calls four minutes apart, stating “Thanks for ignoring me again. Front door had to be broken to gain access to property because of your plumber not being able to follow instructions”.
24 May 2019	A County Court judgement in Mrs Pinnick’s favour under reference E9QZ76MF was entered against the tenants in respect of unpaid rent.
24 May 2019	Mr Pinnick sent Notices under Section 21 of the Housing Act 1980 to recover possession.
24 May 2019	Ms Evans conducted a further inspection of the property, and identified 1 Category 1 hazard and 8 Category 2 hazards under the statutory Housing and Health and Safety Rating System (HHSRS). Photographs taken at the inspection are included in the case papers.
29 May 2019	The tenants sent a WhatsApp message to Mr Pinnick using foul and abusive language complaining that there was no heating or hot water and that no rent would be paid until items were fixed.
24 May 2019 – 5 June 2019	Being satisfied that it was appropriate, the Council decided to prepare and serve 2 Improvement Notices, one in respect of the property and the other in respect of 14 Watt Street.
4 June 2019	Ms Calder advised Ms Evans that the boiler had been replaced.

5 June 2019	The Council, having removed references to the boiler, served 2 Improvement Notices, the details of which are more particularly referred to the following paragraph.
22 July 2019	Ms Calder emailed Ms Evans stating “Just thought I’d give you an update as no repairs have been started to the property yet and I’ve had no word from Richard about them. Also, even though the roof is “fixed”, there are still pigeons getting in and out somehow but no leaks so far thank God”.
29 July 2019 and 8 August 2019	Emails sent by Ms Calder to Ms Evans reported that remedial works referred to in the Improvement Notices were still outstanding.
19 August 2019	Ms Evans revisited the property. The remedial works specified in the Improvement Notices had not been completed, but that she was informed that certain repairs to the roof, not been mentioned in the Improvement Notices, had been undertaken.
24 September 2019	Ms Calder emailed Ms Evans stating “the roof is leaking again in the kitchen so it seems it hasn’t been fixed at all..” Ms Evans reported the matter to Mr Pinnick in a further email that also referred to Ms Calder having told Ms Evans “she has tried reported to you by email but her emails keep bouncing back. I have asked her to confirm the email address she is using as you have received my emails”.
25 September 2019	Mr Pinnick replied to Ms Evans “please see attached copy of invoice and refers to the recent repair that was carried out. Apparently it has been watertight until now however I shall ask the roofer to re-attend. I also see from the footage that it is more of a drip than anything major. I have not received any contact at all from the tenant. Unsurprisingly she has to date still not made any rent payments at all practically from the first month she moved into the property. Still playing the system”.
4 October 2019	Mr Pinnick emailed Ms Calder giving Notice of his intention to inspect the property on 7 October. Ms Calder thereafter emailed Ms Evans stating “there’s no way I’m comfortable with Richard coming into the property for an inspection”.
5 October 2019	Ms Calder sent a further email to Ms Evans reporting further electrical faults including having received an electric shock from the light switch.
7 October 2019	Mr Pinnick visited the property but was denied access.
4 December 2019	Debbie Marks, PA to Mr Pinnick, emailed Ms Evans stating that she was trying to arrange repairs to be carried out and had contractors to do with the necessary repairs but had been told by Ms Calder that she had just had a baby and would not be able to leave the property with the baby whilst the repairs are carried out. Ms Marks responded to Ms Calder’s email by stating “I completely understand that now is not a convenient time to have repairs done... We really

	would like to have it sorted. Please let me know as soon as you feel it would be convenient...”.
30 January 2020	Ms Marks sent a further email to Ms Evans saying “we have been waiting for the tenant to respond... with a convenient time for works to commence which she has still not done. She also has a new contact number which she is refusing to give, which is compounding the issue...”.
6 February 2020	The Council served a Notice of Intent to impose a Financial Penalty of £6392 on Mr and Mrs Pinnick.
2 March 2020	The property was repossessed, with the Gateshead Court bailiff in attendance. Reports were made to the Northumbria police about property having been extensively vandalised and white goods and furniture stolen. Photographs were taken and are included in the case papers. They clearly show malicious damage, including the new shower unit having been ripped off the wall and graffiti scrawled over the tiling.
3 March 2020	Mr and Mrs Pinnick made representations to the Council in response to the Notice of intent. Those representations (inter alia) referred to various items set out in this timeline, stated that the tenants did not pay any rent whatsoever after 30 September 2018 so that rent arrears including legal application fees of £7539.84 were owed, that the tenant’s drug use and domestic abuse were reported, that the property had been visited by the landlord on 2 separate occasions namely on 16 January 2019 and 7 October 2019 in order to inspect the condition of the property but with access denied, that the tenants caused malicious damage to property and repeatedly barred the landlords and their representatives from entering the same.
27 April 2020	Mr Pinnick received a quotation by AME Building Ltd for making good the damage to the property including repainting in the sum of £12,132.
5 June 2020	The Council provided its response to Mr and Mrs Pinnick’s representations, and issued the Final Notice having reduced the financial penalty by £300 to £6092.
3 July 2020	Mr and Mrs Pinnick lodged their appeal against the Penalty Charge with the Tribunal.

The Content of the Improvement Notice

7. The Improvement Notice referred to:-

**Category 1
Hazard
Excess cold**

Deficiencies resulting in the Hazard

1.1 the windows in the living room and both bedrooms are poorly sealed and allow draughts to enter the premises.

1.2 there is a hole in the wall beneath the defunct gas fire which allows draughts to enter the premises.

1.3 the rear external door of the premises is cracked and fits poorly in the frame when closed, allowing draughts to enter the premises and heat to be lost.

Category 2

Hazards

Fire

2.1 the ceiling in the kitchen is covered with polystyrene tiles which are highly flammable.

2.2 living room and large bedroom doors are holed and will not prevent the spread of smoke should a fire occur.

2.3 there are no working smoke detectors in the premises.

Falls between levels

3.1 there is no handrail to the top of the internal stairs.

3.2 the handrail to the rear external steps is not securely fixed to the wall.

Falls on the level

4.1 the supply pipe for the defunct gas fire protrudes above the surface of the floor and is a tripping hazard.

Damp and mould growth

5.1 there is mould growth in the bathroom and no mechanical ventilation is provided.

Domestic

hygiene, pests and refuse

6.1 the panel on the side of the bath is holed and the seal around bath is not smooth. This prevents these areas from being kept clean.

6.2 water supply pipes serving the bathroom are corroded and the paint covering is degraded, preventing them from being kept clean.

6.3 a defunct electric shower is mounted on the wall above the bath, preventing this area from being kept clean.

6.4 the trim between floor covering in the living room and the wall is missing, leaving a gap and preventing this area from being kept clean.

Electrical hazards

7.1 in the living room the pendant light fitting is not secured to the ceiling and the wiring is exposed.

7.2 there are sockets located throughout the premises that are damaged, are not secured to the wall or have gaps between the socket and the wall.

7.3 the occupier describes that use of multiple appliances causes the electricity in the kitchen to "trip".

7.4 the cover for the light to the bathroom is missing and the wiring is exposed.

Hot surfaces and materials

8.1 the pipework under the boiler is not covered and contact with it could result in burns.

8.2 the cooker is not level causing the oven door to swing shut when in use. This has caused burns to the occupier.

Structural collapse

9.1 the boundary wall to the right of the external rear steps is in a poor condition. Bricks are missing in places, others are spalled and brickwork is open jointed.

8. A separate Improvement Notice relating to 14 Watt Street referred to 1 Category 2 Hazard being Damp and mould growth with the deficiency identified as being “there is water ingress into the bathroom of the premises. The water is coming from 16 Watt Street and has resulted in dampness and mould growth”.

9. Both Improvement Notices detailed the remedial action required, stating that should begin on 7 July 2019. The remedial action required under the Improvement Notice relating to the property itself was required to be completed by 28 July 2019, and that relating to 14 Watt Street by 14 July 2019.

10. Both Improvement Notices set out in detail Mr & Mrs Pinnick’s rights of appeal.

11. They did not appeal either of the Improvement Notices, but in the event, and as explained below, that relating to 14 Watt Street was revoked.

The Council’s calculation of the Financial Penalty

12. The Council assessed Mr & Mrs Pinnick’s culpability as reckless and the seriousness of harm as low, and in the Final Notice calculated the penalty charge at £6092, by including the following elements: –

Penalty Charge Starting Amount	£4000
Changes due to offender’s track record	+£600
Changes due to offender’s income	£0
Financial benefit from committing the offence	+£1192
Investigative charges	+ £300
	£6092

The Hearing and the submissions

13. The start of the hearing was delayed because of some initial internet connectivity issues. Mr Currie was able to join approximately 20 minutes after the start, confirming that, with his Council colleagues having been present from the outset, a recap was not necessary.

14. Mr Pinnick had emailed some additional papers the Tribunal Office very late on the eve of the Hearing, which were thereafter emailed to the Council. Those papers included certain character references, extracts from Mr Pinnick’s tax return, and an energy Performance Certificate relating to the property prepared in 2015.

15. As a preliminary matter, the Tribunal Judge asked the Council’s representatives as to whether they had had sufficient time to consider these late submissions. They confirmed that they had, and did not object to their inclusion.

16. Mr Pinnick confirmed that he owned the property jointly with his wife, they acted as a unit, and he represented them both in this matter.
17. He explained that his father had been a Kindertransport refugee, who had come to this country with nothing, but over the years and through hard work had built up a property portfolio within Gateshead.
18. Mr Pinnick had followed his father's lead and now with his wife had a portfolio of 16 properties, albeit with 75% of the value being mortgaged.
19. He explained that he took care of the properties management, notwithstanding residing over 200 miles away, and was able to do so, without engaging a letting agent, because he and his father had built up a network of trusted contractors. He had been very close to his father who had died in August 2018.
20. Mr Pinnick confirmed that the photographs taken by the letting agents who had marketed the property, and included with his case papers, had been taken shortly before the tenancy began, and provided an accurate record of the property's condition at its outset. He stated that some of the items of disrepair referred to in the Improvement Notice, and in particular the hole in the door, had been caused by the occupiers. He emphasised that he had received no complaints about any disrepair from the tenants until 9 weeks into the tenancy, and that at the outset Ms Calder had expressed that it was a lovely flat and perfect for her needs.
21. The events as referred to in paragraph 6 above were discussed in detail.
22. Mr Pinnick denied that the Improvement Notice should have been served.
23. He disputed the Council's assessment of his culpability as being reckless, and submitted that his hands had been tied by the tenants refusing him access in order to inspect and assess the purported hazards.
24. Mr Pinnick confirmed that he had attempted to visit the property in January 2019 and again in October 2019. He described that on one of the occasions, he had knocked on the door, seen Ms Calder at the upstairs window, but she would not answer, and he had had to drive back to London, without being able to inspect the property.
25. He was adamant that the tenants were in his words "playing the system" and that "it is clear that their end game was to gain an entitlement to a rent-free Council flat which was only obtainable by being evicted from the property via a Court order".
26. He took the view that the tenants had signalled that they did not have any concerns about the items referred in the Improvement Notice by being obstructive to his and his contractors attempts to access the property in order to address the same. This was in contrast to those instances where access was allowed in order to deal with the heating and the shower.

27. Mr Pinnick maintained that the level of the fine was manifestly wrong, excessive, totally disproportionate, and unwarranted in the circumstances.

28. He explained that his main occupation is as a wedding organiser and that this business has inevitably been severely and very adversely affected by the consequences of the pandemic. He also referred to having 7 children and the need to obtain family loans in order to survive.

29. At the appropriate points in the discussion Ms Evans was able to give further details of her inspections of the property. She confirmed that the property was untidy and tenants disorganised, but that she had not seen any evidence of drug use during her inspections.

30. She confirmed that she had recalculated her HHSRS scoring after being made aware that the boiler had been replaced but still found that the deficiencies relating to “excess cold” should be rated as a Category 1 Hazard. Ms Evans was, however, unable to provide the Tribunal with the details of her HHSRS scoring, either before or after the central heating boiler was replaced.

31. She also confirmed that having looked at the photographs taken after the property had been repossessed that the only plausible explanation for much of the damage then evident was malicious vandalism which had been caused after her last inspection.

32. It was confirmed that the Council had revoked the Improvement Notice relating to 14 Watt Street, before the issue of the Final Notice, having realised that it had been improperly served on Mr and Mrs Pinnick because they were not the owners of that property. The Council also removed it from the calculation of the penalty charge which was reduced by £300 as a consequence.

33. Ms Tankerville explained that she had been responsible for and intimately involved in the drafting of the Council’s policy. She gave interesting insights as to how that had been created following the advent of the legislation, by using best practice and consideration of the policies of other and neighbouring local authorities. She explained that the Council were constantly reviewing the policy in the light of experience and the developing law, and indeed anticipated bringing forward various amendments where it was felt improvements should be made, in particular to how to better address Houses in Multiple Occupation and because experience has shown that the costs of enforcement figures included in the present policy had proved to be inadequate.

34. Ms Tankerville had reviewed, signed off, and agreed Ms Evans calculations of the penalty under the Final Notice. The £1192 added into those calculations under the heading “financial benefit from committing the offence” was the Council’s estimate of the reasonable costs of effecting the outstanding required works.

35. When pressed as to what sum she would now allocate to the “financial benefit” element, now that she knew the full extent of the tenants rent arrears and the vandalism caused to the property before its repossession, matters which were unknown when the Final Notice was issued, she answered, with commendable professionalism, none.

36. Mr Currie when making closing submissions on behalf of the Council stated that Mr Pinnick’s log showed that no attempts had been made to address the items referred to in the Improvement Notice from March 2019 until October 2019. He referred to Mr Pinnick’s log showing that it was not until 28 November 2019 that a building firm was actually instructed to carry out works. He submitted that the clear conclusion to be drawn from the log and Mr Pinnick’s testimony was that he had decided, having made his own assessment, that he knew better than the Council, and despite not having sought to appeal the Improvement Notice, that the remedial works did not need to be addressed within its stated timescales.

37. Mr Currie pointed out that that because Mr and Mrs Pinnick were clearly out of time as regards any appeal against the Improvement Notice, Section 15 of the Act meant that its terms were confirmed and could not be challenged.

38. He also took issue with any assertions that the Council had been acting outside its statutory obligations to secure a safe property for whoever might occupy the same.

The Statutory Framework and Guidance

39. Section 249A(1) of the Act (inserted by the Housing and Planning Act 2016) states that a “local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person’s conduct amounts to a relevant housing offence...”

40. A list of relevant housing offences is set out in Section 249A(2), which includes the offence, under Section 30 of the Act, of failure to comply with an Improvement Notice. Section 30(4) states that “it is a defence that he had a reasonable excuse for failing to comply with the Notice”.

41. Section 249A(3) confirms only one financial penalty may be imposed in respect of the same conduct and subsection (4) confirms that whilst the penalty is to be determined by the housing authority it must not exceed £30,000. Subsection (5) makes it clear that the imposition of a financial penalty is an alternative to instituting criminal proceedings.

42. The procedural requirements are set out in Schedule 13A of the Act.

43. Before imposing a penalty the local housing authority must issue a “notice of intent” which must set out

- the amount of the proposed financial penalty,
- reasons for proposing to impose it, and
- information about the right to make representations. (Paras 1 and 3)

44. Unless the conduct which the penalty relates (which can include a failure to act) is continuing the notice of intent must be given before the end of the period of 6 months beginning on the first day on which the authority has sufficient evidence of that conduct. (Para 2)

45. A person given notice of intent has the right to make written representations within the period of 28 days beginning with the day after that on which the Notice was given. (Para 4)

46. If the housing authority then decides to impose a financial penalty it must give a “final notice” imposing that penalty requiring it to be paid within 28 days beginning with the day after that on which the final notice was given. (Paras 6 and 7)

47. The final notice must set out: –

- the amount of the financial penalty,
- the reasons for imposing it,
- information about how to pay it,
- the period for payment,
- information about rights to appeal; and
- the consequences of failure to comply with the notice. (Para 8)

48. The local housing authority in exercising its functions under Schedule 13A or section 249A of the Act must have regard to any guidance given by the Secretary of State.(Para 12)

49. Such guidance (“the Guidance”) was issued by the Ministry of Housing Communities and Local Government in April 2018 and is entitled “Civil penalties under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities”.

50. Paragraphs 3.3 and 3.5 of the Guidance confirm that the local housing authority is expected to develop and document their own policies on when to prosecute and when to issue a civil penalty and the appropriate levels of such penalties and should make such decisions on a case-by-case basis in line with those policies.

51. The Guidance states “Generally we would expect the maximum amount to be reserved for the very worst offenders. The actual amount levied in any particular case should reflect the severity of the offence as well as taking account of the landlord’s previous record of offending. Local housing authorities should consider the following factors to help ensure that the... penalty is set at an appropriate level:

- severity of the offence,...
- culpability and track record of the offender,...
- the harm caused to the tenant,...
- punishment of the offender,...
- deter the offender from repeating the offence,....
- deter others from committing similar offences,....

- remove any financial benefit the offender may have obtained as a result of committing the offence...

52. The Council has documented its own “Housing and Planning Act 2016 Private Sector Housing Enforcement Policy and Enforcement Policy” and subsequently published online the “Gateshead Private Sector Housing Team Civil Penalties Enforcement Guidance” (together referred to as “the Council’s policy”) and included copies in the papers. The Tribunal makes further reference to the Council’s policy later in these reasons.

53. A person receiving a final notice has the right of appeal to the Tribunal against the decision to impose a penalty or the amount of the penalty (under paragraph 10 of Schedule 13A of the Act).

54. The final notice is suspended until the appeal is finally determined or withdrawn. (Para 10(2))

55. The appeal is by way of rehearing, but the Tribunal may have regard to matters which the local authority was unaware of. (Para 10 (3))

56. The Tribunal may confirm, vary or cancel the final notice but cannot impose a financial penalty of more than the authority could have imposed. (Paras 10 (4) and (5))

57. The Upper Tribunal has, in various cases, confirmed that: –

- the Tribunal’s task is not simply to review whether a penalty imposed by a Council was reasonable, it must make its own determination having regard to all the available evidence,
- in so doing, it should have regard to the 7 factors specified in the Guidance,
- it should also have particular regard to the Council’s own policy. *Sutton and another v Norwich City Council [2020] UKUT 90 (LC)*.
- the Tribunal’s starting point in any particular case should normally be to apply that policy as if it were standing in the Council’s shoes,
- whilst a Tribunal must afford great respect (and thus special weight) to the decision reached by the Council in reliance on its own policy, it must be mindful of the fact that it is conducting a rehearing, not a review; the Tribunal must use its own judgement and it can vary the Council’s decision where it disagrees with it, despite having given it that special weight. If, for example, the Tribunal finds that there are mitigating or aggravating circumstances which the Council was unaware of, or of which it took insufficient account, the Tribunal can substitute its own decision on that basis. *London Borough of Waltham Forest v Marshall and another [2020] UKUT 0035 (LC)*.

The Tribunal's Reasons and Conclusions

58. There are three substantive issues for the Tribunal to address: –

- whether the Tribunal is satisfied beyond reasonable doubt that Mr & Mrs Pinnick has committed a “relevant housing offence” in respect of the property,
- whether the Council has complied with all the necessary procedural requirements relating to the imposition of the financial penalty, and
- whether a financial penalty is appropriate and, if so, has been set at the appropriate level.

Dealing with each of these issues in turn:-

59. Mr Pinnick readily conceded that the works specified within the Improvement Notice had not been attended to within the timescales set, and the Tribunal finds that Mr & Mrs Pinnick did not have a reasonable excuse for this failure.

60. It was noted that they did not appeal against the Improvement Notice, and nor did they engage at all with the Council during the period in question.

61. Mr and Mrs Pinnick were fully aware of their rights to appeal. Detailed notes were appended to the Improvement Notice. It is also apparent from the papers that they have previously received Improvement Notices in respect of other properties.

62. As Mr Currie alluded to in his concluding submissions Section 15(6) of the Act confirms that “If no appeal against an Improvement Notice is made... within the period for appealing against it, the Notice is final and conclusive as to matters which could have been raised on appeal.”

63. The case of *IR Management Services Ltd v Salford City Council [2020]UKUT 0081(LC)* also confirms that for Mr & Mrs Pinnick to have made out the defence of having a “reasonable excuse” they would have needed to have established, on the balance of probabilities, that they had such an excuse. The Tribunal finds that they have not done so.

64. The Tribunal accepts that Mr Pinnick was personally not allowed access to inspect when visiting the property both in January 2019 and again some 9 months later in October, and that the tenants should have allowed that access. However the Tribunal does not accept that this of itself precluded Mr and Mrs Pinnick instructing contractors to act on their behalf and to effect the remedial works specified in the Improvement Notice during the period set for compliance. There is no evidence that Mr and Mrs Pinnick made any attempt to do so until 18 September 2019 or that they sought to proactively engage with the Council.

65. On the evidence before it, the Tribunal is clear that Mr and Mrs Pinnick are experienced landlords with an extensive portfolio of rented properties within the vicinity, and that they could and should have invested more urgency in completing the necessary remedial works. As the owners and the landlords of the property have a responsibility to ensure that relevant safety legislation is complied with.

66. The Tribunal is satisfied, beyond reasonable doubt, that their conduct amounts to an offence under Section 30 of the Act.

67. The Tribunal carefully reviewed the actions taken by the Council and the timing and information set out in its different notices and concluded that it has satisfied the necessary procedural requirements to be able to impose a financial penalty.

68. The Tribunal then considered the appropriateness and amount of a penalty.

69. The Tribunal is satisfied that it is appropriate to impose a financial penalty in respect of the offence, which as confirmed in the Guidance is an alternative to prosecution.

70. The Tribunal began the task of assessing the appropriate amount of the fine by a review of the actions of the parties and an evaluation of the evidence. In so doing it has had particular regard to the 7 factors specified in the Guidance referred to in paragraph 51 above.

71. Whilst not bound by it, the Tribunal also carefully reviewed the Council's policy and found that it provides a sound basis for quantifying financial penalties in a reasonable, objective and consistent basis. The Tribunal accepts that the policy results from a process whereby the Council has sought to fulfil its statutory duty to provide a clear and rational basis for its determinations on a case-by-case basis. As confirmed by the Upper Tribunal in the *Sutton* case, the local authority is well placed to formulate its policy on penalties, taking into account the Guidance, and that "It is an important feature of the system of civil penalties that they are imposed in the first instance by local housing authorities and not by courts or Tribunals. The local housing authority will be aware of housing conditions in its locality and will know if particular practices or behaviours are prevalent and ought to be deterred".

72. As such the Tribunal was content to use the Council's policy as the starting point and as a tool to assist its own decision making, paying very close attention and respect to the views expressed by the Council, to see if after making its own decision (in place of that made by the Council) the Tribunal agrees or disagrees with the Council's conclusions. In doing so it makes no criticism of the way in which the Council has approached the case, or the procedures which it has followed.

73. The Council's policy is itself based on the factors specified in the Guidance, and refers to the 4 potential categories of Harm and Severity of Offence, being Low, Medium, High and Very High, and 4 categories of Culpability being Low (little or no fault of landlord), Negligent (failure to take reasonable care) Reckless (foresight or wilful blindness) and Deliberate (intentional breach), and includes descriptions of each.

74. It thereafter sets out the following table to determine which penalty band is to be applied:-

		Culpability			
		Low Little or no fault of landlord	Negligent failure to take reasonable care	Reckless foresight or wilful blindness	Deliberate Intentional breach
Harm	Low (Range)£	0 – 3000	2000 – 4000	3000 – 5000	4000 – 6000
And	Starting point	2000	3000	4000	5000
Severity	Medium (Range) £	2000 – 4000	4000 – 8000	6000 – 10,000	8000 – 12,000
Of	Starting point	3000	6000	8000	10,000
Offence	High (Range)£	2000 – 6000	6000 – 10,000	10,000 – 14,000	16,000 – 20,000
	Starting point	4000	8000	12,000	18,000
	Very High (Range)£	3000 – 7000	8000 – 12,000	16,000 – 20,000	20,000 – 30,000
	Starting point	5000	10,000	18,000	25,000

75. The Council's policy states that the process by which the amount of the financial penalties calculated is broken down into five main stages

- Stage 1 determines the penalty band for the offence. Each penalty band has a starting amount and a maximum amount.
- Stage 2 determines how much will be added as a result of the landlord's income and track record, including consideration of any relevant mitigating or aggravating factors
- Stage 3 considers any financial benefit that the landlord may obtain from committing the offence
- Stage 4 is where the costs of investigating determining and applying the penalty are calculated
- Stage 5 considers and combines the results of stages 1-4 and provides the final financial penalty amount.

76. The Tribunal, having had careful regard to all the evidence before it agreed with the Council's assessment that that Mr and Mrs Pinnick had acted with foresight and wilful blindness to the consequences, or potential consequences, of not rectifying the defects identified in the Improvement Notice not just during the time scales referred to in the Notice, but also in the months before and afterwards.

77. The Tribunal did not agree with Mr Pinnick's assertions either there was no offence at all or that there was little or no fault of the landlord. The Tribunal agreed, on balance, that the correct culpability band was that which was described under the heading "reckless" in the Council's policy.

78. The Tribunal noted that both the Council and Mr Pinnick had assessed the harm rating as low, and agreed with that, notwithstanding that any such assessment could and should include not just actual harm but also the potential for harm.

79. Having found the culpability rating to be reckless, and the harm rating low, the starting point figure as dictated by the Council's policy was £4000.

80. The Tribunal then went on to the next stages in the policy.

81. Stage 2 refers to consideration of the landlord's income and finances, and track record.

82. The Tribunal was clear that nothing needed to be added in respect of any relevant income received from the property.

83. The Tribunal then had careful regard to the parties respective representations as regards Mr & Mrs Pinnick's track record.

84. In its policy of the Council sets out 10 different types of "aggravating" factors to consider, stating that each instance would move the fine upwards proportionately i.e. and in the penalty band in question, by £100. It also referred to 6 different potential mitigating factors which could reduce the fine proportionately i.e. by £166/7 in each instance.

85. The Council had added £600 to its calculation as a consequence of 5 different Improvement Notices (relating to other properties) which had been served during the previous five years, including one of which was noted as not having been complied with. Whilst there was no evidence before the Tribunal regarding the seriousness of the hazards leading to the serving of these notices, none had apparently been appealed, and the Tribunal agreed that to be both a correct application of the Council's policy and consistent with the Guidance, and that therefore that figure should remain.

86. The Tribunal did not agree with Mr Pinnick's assertions that the Council had been pursuing other than its legitimate agendas to improve housing standards within the borough, and to address health and safety issues brought to its attention after complaints had been made.

87. It did however, when considering possible mitigating factors, find that the answer to the question in the Council's policy "Is the victim/tenant culpable at all?" must now be "Yes" rather than "No". Indeed the Tribunal concluded that to properly apply the Council's policy two such mitigating instances should be brought into the calculation. The first being that the tenant had on occasions not allowed Mr Pinnick access to the property in order to inspect the same, something he was entitled to under the terms of the tenancy agreement, and which had had an effect on how quickly the necessary remedial works were addressed. The second was due to the Tribunal's belief, based on the balance of probabilities, and Mr Pinnick's evidence as to the repair of the property at the beginning of the tenancy, the tenant's WhatsApp messages of 23 and 24 May 2019, and the malicious damage caused at the time of the repossession, that some (but certainly not all) of the deficiencies identified in the Improvement Notice had been caused or exacerbated by the occupiers.

88. As a consequence the Tribunal decided that the penalty should be reduced by $2 \times \frac{1}{6}$ of £1000 i.e. £333.

89. Stage 3 of the Council's policy requires the amount of any financial benefit to be added to the penalty calculation. The policy states that "calculating the amount of financial benefit obtained will need to be done on a case-by-case basis" before giving some examples. In a case relating to a failure to comply with an Improvement Notice, the potential example refers to "the cost of any works required". In this instance the Council had calculated that as being £1192 and added it to the penalty.

90. Mr Pinnick had understandably objected to that when responding to the Notice of Intent.

91. The Tribunal was pleased that Ms Tankerville now agreed with its own assessment that to add a figure into its calculation on the basis that Mr and Mrs Pinnick had made a profit out of the tenancy, when the tenants had paid no rent for approximately 18 months and had maliciously damaged the property prior to its repossession would be unreasonable, and that a proper application of the Council's policy, in particular where it states that "should the landlord be able to demonstrate the financial benefit was not obtained, then this will be taken into account..." meant that the costs of properly complying with the Improvement Notice, whilst providing the base figure below which the fine must not fall, should not in the circumstances of this particular case be added onto the other figures.

92. Stage 4 of the Council's policy "in keeping with the principle that the cost of enforcement should be borne by the offender" sets out a table of the costs it will apply in different cases. In the present case the median figure quoted and applied was £300, which the Tribunal was content to adopt.

93. Having made its own assessment, by in effect standing in the Council's shoes, and applying the relevant facts as now known, the calculation then made was as follows:-

Penalty Charge Starting Amount	£4000
Changes due to offender's track record	+£600
Reductions/ mitigations due to the tenants 1. obstruction of inspections, and 2. causing some of the items requiring repair under the Improvement Notice	- £333
Financial benefit from committing the offence	£0
Investigative charges	+ £300
	£4567

94. It is perfectly logical for a Housing Authority to use a formula (indeed the legislation has mandated that it should have a policy), but it is essential that it, and in this instance the Tribunal, then review the answer given in a holistic way, to see if that answer in a particular case is able to pass the test of being reasonable and proportionate in all the circumstances.

95. The Tribunal, when reviewing the figure of £4567, noted that:-
- because it exceeds the sum estimated as the cost of the necessary remedial works i.e. £1192, it satisfies the mandate under the Guidance relating to the removal of any financial benefit and where it is stated that “the guiding principle here should be to ensure that the offender does not benefit as result of committing an offence, i.e. it should not be cheaper to offend than to ensure a property is well maintained and properly managed”
 - separating out the costs of the necessary remedial works and the Council's enforcement costs, the resultant net figure amounts to £3075, which the Tribunal considers to be reasonable in order to satisfy the other factors set out in the Guidance, being the severity of the offence, the culpability and track record of the Applicants, where the Tribunal also took into account the references that they had supplied, the harm and potential harm of the works not having been properly addressed within a reasonable timescale, and the needs to deter not just the Applicants but also others from repetition.
 - it is less than 1/6 of the maximum penalty that the Council could have imposed by law being £30,000, which understandably the Guidance states generally would only be expected to be reserved for the very worst offenders.

96. Whilst the Tribunal was sympathetic to Mr and Mrs Pinnick's plight in respect of having received virtually no rent in respect of tenancy, and the very adverse effect the pandemic on their other business, as well as the totally abhorrent vandalism caused to the property prior to its repossession, it is clear that notwithstanding any mortgage indebtedness, they are by their own admission, the owners of substantial assets. The Guidance also makes it clear "a civil penalty should not be regarded as an easy or lesser option compared to prosecution. While the penalty should be proportionate and reflect both the severity of the offence and whether there is a pattern of previous offending, it is important that it is set at high enough level to help ensure that it has a real economic impact on the offender and demonstrate the consequences of not complying with their responsibilities".

97. The Tribunal, having reviewed all of the evidence and carefully considered all the matters referred to in the Guidance, is content that that figure of £4567 is just and proportionate in all the circumstances.

Tribunal Judge J Going
17 February 2021